

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

376D0651

HOUSE BILL NO. 1298

Introduced by: Representatives Haley, Fischer-Clemens, Hagen, Koetzle, Lucas, and Wilson
and Senators Olson, Duxbury, Flowers, Hutmacher, Paisley, and Symens

1 FOR AN ACT ENTITLED, An Act to provide for a bill of rights for children in the care of the
2 state.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The Legislature finds that children in the care of the state continue to be citizens
5 protected by the United States Constitution and the Constitution of the State of South Dakota.
6 Their civil liberties should not be restricted more than necessary to prevent escape from custody.
7 Children have highly protected associational rights with their parents and families. They also have
8 educational rights that rarely come into discussions of adult's rights. To implement these general
9 principles, the Legislature recognizes the following rights of children in the care of the state:

10 (1) The right to freedom of speech:

11 (a) Uncensored communications with their families, the press, legal service
12 providers and advocacy organizations, government agents and officials, and
13 elected representatives, absent a showing of an attempt to use correspondence
14 in furtherance of escape;

15 (2) The right to freedom of religion:

16 (a) Possession of religious, spiritual, or moral treatises and supplies necessary to

1 the practice of each child's individual religion;

2 (b) Visitation with religious, spiritual, or moral leaders or teachers of the child's
3 religious persuasion;

4 (c) Diet acceptable to the child's religion;

5 (d) Release from normal prison activities at times appropriate and necessary to the
6 practice of the child's religion;

7 (3) The right to associate with their families and friends:

8 (a) Clear, uniform, written, published rules of contact which facilitate rather than
9 hamper maintaining the parent-child bond;

10 (b) Weekly visitation with parents which should not be revoked as a means of
11 discipline;

12 (c) Reasonable visitation with extended family members and friends;

13 (d) Next day visitation with their parents after any significant injury or episode
14 such as fainting, seizure, asthma attack, or suicide attempt;

15 (e) Twice weekly telephone calls to their parents; and

16 (f) Reasonable telephone access to contact others;

17 (g) Reasonable releases to attend significant family events, such as sickbeds,
18 funerals, weddings, and births;

19 (4) The right to protection from cruel and unusual punishment:

20 (a) Minor offenses or status offenses should not be subjected to the same restraints
21 and punishments as violent offenses;

22 (b) Children in need of supervision should not be incarcerated and they should
23 always be kept separate from violent delinquents;

24 (c) Use of force should be limited to the minimum necessary to prevent injury;

25 (d) Use of restraints should be limited both in duration and in situation when

1 applied and it should be used only to prevent imminent physical harm to self or
2 others. Four pointing, spine boarding, and hog tying should be specifically
3 prohibited;

4 (e) Discipline should be used rather than punishment;

5 (f) Solitary confinement should not be used for extended periods of time;

6 (g) Mattresses and bedding should not be denied;

7 (h) Food should not be used as a form of discipline;

8 (i) An ombudsman should investigate alleged abuses of discipline and use of force
9 policies;

10 (5) The right to due process of law:

11 (a) Children who enter the system as children in need of supervision should not be
12 treated as delinquents without a hearing before a judge and legal
13 representation;

14 (6) The right to education:

15 (a) Children should attend classes regardless of disciplinary status or facility
16 staffing needs;

17 (b) Each child in state custody should be academically evaluated and assigned an
18 educational program that is appropriate to that child;

19 (c) State facilities should have a full range of educational opportunities available
20 to address both the learning disabled and the gifted;

21 (7) The right to adequate health care and a healthy living environment:

22 (a) Health care should be provided by qualified medical professionals;

23 (b) Mental health care should be provided on a regular, consistent, and frequent
24 basis;

25 (c) As part of their mental health care children should be treated with dignity at all

1 times;

2 (d) Mental health care should continue for a reasonable period after release from
3 incarceration;

4 (e) Living areas and cells should be adequately heated and cooled;

5 (f) Sleeping arrangements should include mattresses and bedding;

6 (g) Clothing should be adequate to maintain a comfortable body temperature;

7 (h) Food should be nutritionally balanced and reasonably palatable.

8 Section 2. This Act shall be know as Gina's Law.